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August 25, 2020

VIA ECF

Hon. Ronnie Abrams, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Jennifer Eckhart and Cathy Areu v. Fox News Network, LLC, et al.
Civil Action No. 20-cv-05593-RA

Dear Judge Abrams:

On Friday, August 21, 2020, our firm was retained as substitute counsel to represent plaintiff Cathy Areu (“**Plaintiff Areu**”) in the above-captioned action. A proposed Consent Order Granting Substitution of Attorney, and accompanying Notices of Appearance, were filed by our firm on August 24, 2020 (ECF Dkt Nos. 22-26). We write to request an extension of our time to respond to a safe harbor notice that defendants Fox News Network, LLC, Sean Hannity, Tucker Carlson, and Howard Kurtz (“**Fox Defendants**”) served upon Plaintiff Areu’s prior counsel pursuant to Rule 11(c)(2) of the Federal Rules of Civil Procedure (the “**Rule 11 Notice**”) on or about August 7, 2020. Plaintiff Areu’s deadline to respond to the Rule 11 Notice is currently August 28, 2020. The parties have also been ordered to appear for an initial status conference by telephone on August 28, 2020 at 10:00 a.m.

The Rule 11 Notice identifies a number of purported deficiencies in the Complaint, including, among other things, that the Court lacks jurisdiction over Plaintiff Areu’s claims. Given that: (i) our firm was just retained, (ii) is gathering the information necessary to evaluate whether to amend or withdraw the complaint in response to Defendants’ Rule 11 Notice, and (iii) is working with Plaintiff Areu’s prior counsel to transfer the case file, we respectfully request an extension of time until September 11, 2020 to respond to the Rule 11 Notice and to either amend or withdraw the complaint.

Additionally, we request, assuming discovery will go forward following the initial conference, that the proposed Case Management Plan filed on August 21, 2020 (Dkt No. 21) be amended such that its dates run from the anticipated filing of Plaintiff Areu's amended complaint (if one is filed), as follows:

- Deadline for completing Initial Disclosures to be changed from no later than September 4, 2020 to no later than September 25, 2020 (14 days from the filing of Plaintiff Areu's amended pleading, if any);
- Deadline for completing fact discovery to be changed from December 23, 2020 to January 11, 2020 (120 days from the filing of the amended pleading, if any);
- Service of initial requests for production of documents to be changed from September 4, 2020 to September 25, 2020 (14 days from the filing of the amended pleading, if any);
- Service of interrogatories to be changed from September 4, 2020 to September 25, 2020 (14 days from the filing of the amended pleading, if any);
- Completion of depositions to be changed from December 11, 2020 to December 31, 2020;
- Service of requests to admit to be changed from December 18, 2020 to January 8, 2021;
- Completion of expert discovery to be changed from February 22, 2021 to March 15, 2021;
- Completion of all discovery to be changed from February 22, 2021 to March 15, 2021.

We have conferred with all Parties concerning the foregoing, and their positions are as follows:

- Plaintiff Eckhart's counsel (Wigdor LLP, former counsel for Plaintiff Areu) has consented to our request for additional time to respond to Defendants' Rule 11 Notice and, similarly, does not wish to be required to respond to a Rule 11 motion while Plaintiff Areu still has time to cure the issues raised therein.
- Counsel for defendants Fox News Network, LLC, Sean Hannity, Tucker Carlson, and Howard Kurtz (the "**Fox News Defendants**") take the position that the time to respond to the Rule 11 Notice remains Friday, August 28, 2020 (which is also the date of the initial

conference) as to Plaintiff Areu and her counsel Wigdor LLP, opposes the withdrawal of Wigdor LLP as counsel to Plaintiff Areu to the extent that the withdrawal seeks to exculpate Wigdor LLP from sanctions for conduct that occurred while it was counsel to Plaintiff Areu, and takes the position that should Plaintiff Areu's claims not be withdrawn by Friday, Fox News Defendants' Rule 11 motion should be ruled upon to avoid discovery on meritless claims. Further, as indicated in the Case Management Plan, Fox News Defendants take the position that no discovery should take place on any claims pending disposition of their planned Motion to Dismiss.

- Counsel for Defendant Henry agrees that Fox News Defendants' Rule 11 motion should go forward as scheduled, does not consent to Plaintiff Areu's request for an extension of time, and believes there is no basis for discovery to be delayed. They take the position that Mr. Henry has had his reputation destroyed and it is imperative that discovery go forward so he can clear his name as soon as possible. To the extent the Court allows Plaintiff Areu's extension to September 11, 2020, to file an amended complaint, then Defendant Henry would agree to extend the due dates for initial disclosures, document requests and interrogatories, but only until September 11, 2020. Defendant Henry's position is that Plaintiff Areu should know in sufficient time before September 11, 2020 if she intends to amend the complaint and, if so, should have time to draft the initial disclosures and discovery requests and serve them by September 11, 2020. Defendant Henry does not agree to an extension of any other deadline.

Undersigned counsel intends to participate in the status conference that the Court has scheduled for August 28, 2020 to address these and any other potential concerns. Should Your Honor require any additional information or documentation, please do not hesitate to contact us.

Respectfully submitted,

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/s/ Matthew L. Berman

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cc: All counsel of record (via ECF).